

ORIGINAL



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MEMORANDUM

TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGJ*

DATE: December 24, 2008

RE: IN THE MATTER OF THE APPLICATION OF EXTENET SYSTEMS, INC.  
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE PRIVATE LINE POINT-TO-POINT FIBER  
TRANSPORT SERVICE FOR WIRELESS SERVICE PROVIDERS (DOCKET  
NO. T-20597A-08-0320)

Attached is the Staff Report for the above referenced Application. The Applicant is applying for approval to provide the following services:

- Private Line Telecommunications Services

Staff is recommending approval of the Application.

EGJ:PJG:red

Originator: Pamela J. Genung

Attachment: Original and thirteen copies

Arizona Corporation Commission  
**DOCKETED**  
DEC 24 2008

DOCKETED BY	<i>MG</i>
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DOCKET NO. T-20597A-08-0320

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EXTENET SYSTEMS, INC.

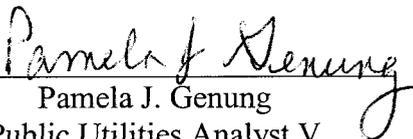
DOCKET NO. T-20597A-08-0320

IN THE MATTER OF THE APPLICATION OF EXTENET SYSTEMS, INC. FOR  
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
PRIVATE LINE POINT-TO-POINT FIBER TRANSPORT SERVICE FOR WIRELESS  
SERVICE PROVIDERS

DECEMBER 24, 2008

## STAFF ACKNOWLEDGMENT

The Staff Report for ExteNet Systems, Inc., Docket No. T-20597A-08-0320 was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide private line point-to-point fiber transport service for wireless service providers.

  
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Pamela J. Genung  
Public Utilities Analyst V

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**ATTACHMENT**

States/Jurisdictions in which ExteNet is Currently Approved..... Attachment A

## **1. INTRODUCTION**

On June 24, 2008, ExteNet Systems, Inc. ("ExteNet" or "Applicant" or "Company") filed an Application with the Arizona Corporation Commission ("Commission") for a Certificate of Convenience and Necessity ("CC&N") to provide private line point-to-point fiber transport service for wireless service providers within the State of Arizona. The Applicant also petitioned the Commission for a determination that its proposed services should be classified as competitive.

On July 22, 2008, Staff issued its First Set of Data Requests to ExteNet. On August 11, 2008, ExteNet and Staff entered into a Protective Agreement for confidential information. On August 12, 2008, ExteNet provided information in response to Staff's First Set of Data Requests.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

In its Application, ExteNet provides the following information and description of ExteNet's services that it proposes to provide in Arizona. ExteNet proposes to offer Dedicated Point-To-Point Private Virtual Circuit ("PVC") Transport Service on a wholesale basis via a Distributed Antenna System ("DAS") network. This service enables Wireless Service Providers ("WSP") to improve their coverage by filling in 'dead spots' and/or to increase their capacity to provide services in certain geographic areas.

ExteNet was founded in 2002 and is headquartered in Lisle, Illinois. ExteNet is a foreign corporation organized under the laws of Delaware and is privately funded. ExteNet has two wholly owned subsidiaries, ExteNet Systems (Virginia) LLC and ExteNet Systems (California) LLC, that provides services of the same type that ExteNet Systems, Inc. intends to provide in Arizona. Neither subsidiary will provide service in Arizona. ExteNet and its affiliates are comprised of approximately 40 employees and 4 full-time independent contractors. The 9 members of ExteNet's management team average over 20 years experience each in the telecommunications industry.

ExteNet currently has 2 employees in Arizona and does not have any specific plan to increase the number of employees in Arizona at this time. ExteNet also does not plan to establish a customer service center in Arizona. ExteNet's Network Operations Center ("NOC") is located within its corporate headquarters in Lisle, Illinois. Since ExteNet's customers are generally wireless service providers, ExteNet typically monitors the unswitched point-to-point telecommunications services that comprise the DAS networks utilized by its customers from its NOC. ExteNet stated that its NOC receives alerts 24x7 if there are problems with the network and takes immediate steps to resolve any issue. ExteNet's customers may also reach ExteNet's NOC 24x7 via a toll-free number.

ExteNet indicated that it has been authorized to provide telecommunications services in 23 states/jurisdictions. (See Attachment A) Of those 23 states/jurisdictions, ExteNet and its subsidiaries currently provide services similar to those it intends to offer within Arizona in the following states/jurisdictions: California, Florida, Massachusetts, Michigan, Nevada, New York, and Texas. Staff has contacted 13 of the 23 Public Utility Commissions representing each of these states/jurisdictions and found that ExteNet is authorized to provide telecommunications services and that no complaints have been filed against ExteNet. Further, a search of the Federal Communications Commission website found that there have been no complaints filed against ExteNet. Based on the above information, Staff believes ExteNet possesses the technical capabilities to provide the services it is requesting the authority to provide.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

On August 18, 2008, the Applicant provided audited consolidated financial statements under a protective agreement for the time periods ending September 30, 2006 and September 30, 2007. These financial statements list total assets of \$29,213,678; total equity of \$23,535,667; and a net loss of \$4,859,741 for the period ending September 30, 2007. The Applicant provided notes related to the financial statements.

The Applicant stated in its proposed Tariff (reference Section 3.6 on Original Sheet 18 of ExteNet's proposed AZ No. 1 Tariff) that it does not collect deposits, advances, or prepayments from its customers. In response to Staff's First Set of Data Requests, ExteNet filed several replacement pages to its proposed Tariff to ensure this language is consistent throughout its Tariff. Therefore, since ExteNet is requesting approval to provide wholesale services solely to other carriers, not retail customers, and will not be collecting deposits, advances, or prepayments from its customers, Staff does not believe a performance bond or irrevocable sight draft Letter of Credit is necessary.

### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. ExteNet indicated that as of September 30, 2007, its net book value or fair value rate base was \$10,000. The rate to be ultimately charged by the Company will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

The rates proposed in this filing are for competitive services. ExteNet does not provide service to residential or business end users. ExteNet provides unswitched point-to-point telecommunications services and proposes to offer customized services to meet the individual needs of carrier customers in Arizona. ExteNet's customers are all large, sophisticated WSP's who negotiate contract rates on an individual case basis ("ICB") with ExteNet. For ExteNet customers that do not need individualized offerings and do not require an ICB contract to meet its needs, those customers will be allowed to purchase services in accordance with the maximum/actual rates established in ExteNet's proposed tariff.

Staff has reviewed the maximum/actual rates to be charged by the Applicant. ExteNet's rates are for services that have been previously classified as competitive by the Commission and the services are provided to sophisticated carriers and communications companies. These carriers and companies have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services. Although both an actual rate and a maximum rate may be listed for each competitive service offered, ExteNet's proposed tariff contains actual rates that equal the maximum rates. The proposed tariff rates are similar to those charged by ExteNet in other states and are similar to the tariffed rates of other carriers in Arizona. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. Therefore, Staff believes that ExteNet's proposed rates are just and reasonable.

## **5. REVIEW OF COMPLAINT INFORMATION**

The Applicant has neither had an Application for service denied nor had a CC&N revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. The Corporations Section has indicated that ExteNet is in good standing and the Consumer Services Section reports no complaints have been filed in Arizona from January 1, 2005 to July 9, 2008.

The Applicant certified that none of its officers, directors or partners has been involved in any civil or criminal investigations. The Applicant also indicated that none of its officers, directors or partners had been convicted of any criminal acts within the last ten years.

## **6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES**

### *6.1 Private Line Services*

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 *Description of Requested Services*

ExteNet proposes to provide private line point-to-point service.

6.3 *A description of the general economic conditions that exist that make the relevant market for the service one that is competitive.*

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, a number of ILECs and CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

6.4 *The number of alternative providers of the service.*

IXCs are providers of private line service in the State of Arizona. ILECs and CLECs also provide private line service.

6.5 *The estimated market share held by each alternative provider of the service.*

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

6.6 *The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.*

None.

6.7 *The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.*

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the CLECs offer substantially similar services.

## 7. RECOMMENDATIONS

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;

2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
4. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
5. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from ExteNet indicating that as of September 30, 2007, its net book value or fair value rate base was \$10,000. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other wholesale transport providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
6. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

#### **8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE**

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

## Attachment A

ExteNet indicated that it is has been approved to provide telecommunications services in the following states/jurisdictions:

1. California
2. Connecticut
3. Delaware
4. District of Columbia
5. Florida
6. Hawaii
7. Illinois
8. Indiana
9. Louisiana
10. Maryland
11. Massachusetts
12. Michigan
13. Minnesota
14. Missouri
15. Nevada
16. New Jersey
17. New York
18. Ohio
19. Pennsylvania
20. Rhode Island
21. Texas
22. Virginia
23. Wisconsin